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United States  
Department of  
Agriculture

DEC 18 1998

Food and  
Consumer  
Service

Reply to:  
Attn: of: SP-99-08

Subject: Executive Management Services, Inc.

To: STATE AGENCY DIRECTORS - Colorado ED, Iowa, Kansas,  
(Child Nutrition Programs) Missouri ED, Montana OPI,  
Nebraska ED, North Dakota,  
South Dakota, Utah and  
Wyoming ED

Executive Management Services, Inc. (EMS), is a private, for-profit company that assists residential child care institutions (RCCIs) in developing and operating their school meal programs. EMS has been identified by some State agencies as a food service management company (FSMC) and by others as a consultant. EMS representatives requested that our National Office conduct a review of the services they provide to RCCIs in order to determine if EMS should be classified as a FSMC or a consultant.

7 CFR 210.2 defines a FSMC as "a commercial enterprise or a nonprofit organization which is or may be contracted with by the school food authority to manage any aspect of the school food service." A company that is acting on behalf of a school food authority (SFA) by actually being in charge of or directing any aspect of the food service is a FSMC. An individual or organization that performs specific, discreet services for a SFA that fall short of managing a part of the program would be a consultant. For example, an organization hired to analyze a meal service and develop menus under Assisted Nutrient Standard Menu Planning would not be managing any part of the actual meal service, and so would be a consultant. One that prepares the menus, purchases food, and prepares and serves meals is clearly a FSMC. The test is whether the company is actually *managing* some aspect of the food service, as opposed to merely providing advice, guidance or technical assistance.

Our National Office met with representatives from EMS on June 16, 1998. During that meeting, EMS representatives described the services that it provides to RCCIs. EMS does not prepare the food, but it plans menus, reviews production records, and manages the enrollment, meal count, and claims processes. Taken as a whole, these services go beyond merely providing advice or technical assistance. Therefore, EMS is a FSMC, and should be treated as such consistently.

SFA contracts with FSMCs are governed by the provisions of 7 CFR 210.16, and among other requirements, they must be competitively procured. Generally, EMS' existing contracts with RCCIs were entered into before the RCCIs were participating in the NSLP, and our understanding is that they were not competitively procured. However, many of these RCCIs need EMS, at least in the short term, in order to continue to participate in the NSLP because they do not yet have the expertise to operate a food service consistent with Program requirements. Therefore, in order to avoid the disruption of food service in the RCCIs, we will allow the RCCIs to continue to pay for EMS' services from the nonprofit school food service account. However, at the earliest possible time, *no later than the beginning of school year 1999-2000*, the contracts will have to conform to all Federal requirements, including the requirement that they be competitively procured in order for the RCCIs to continue to pay EMS' services from the nonprofit school food service account.<sup>1</sup> RCCIs that do not wish to conduct a procurement that meets Federal requirements can, subject to State procurement laws, pay for EMS' services from other funds. RCCIs that need help conducting the procurement cannot both hire EMS to assist with the procurement (e.g., to prepare the bid documents), and award the FSMC contract to EMS because it would be a conflict of interest.

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<sup>1</sup> When Federal grant dollars are used to pay for FSMC, consultant, or any other services, those services must be procured competitively. Therefore, the question as to whether EMS' services must have been competitively procured does not hinge on whether it is a consultant or a FSMC, but on whether it was paid with Federal dollars from the nonprofit school food service account. Under Federal requirements, contracts for \$10,000 or less can be procured less formally (e.g., with documented price quotes from three or more qualified sources), but these are still competitive procurements.

State Agency Directors

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Please let us know if you have any questions or require further clarification on these issues.



*for* ANN C. DEGROAT  
Regional Director  
Child Nutrition Programs